

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

March 11, 2010

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Board members:

**SUBJECT: INFORMATION BRIEFING ON PERMITTING PROCESS FOR
CONSERVATION STEWARDSHIP PERMITS FOR KAPAPA ISLET
WILDLIFE SANCTUARY, OAHU**

SUMMARY:

This Board Submittal provides a status report on the permitting process for conservation stewardship permits for the Kapapa Islet Wildlife Sanctuary, Oahu.

BACKGROUND:

On December 11, 2009 the Board of Land and Natural Resources unanimously approved the adoption of Chapter 13-126, Hawaii Administrative Rules, updating the Rules Regulating Wildlife Sanctuaries. One of the major changes to the rules was the inclusion of Kapapa Islet, Oahu, as a Wildlife Sanctuary. In approving the rules, the Board directed the Division of Forestry and Wildlife to work with interested community members and fishing clubs to develop a stewardship partnership for Kapapa Islet that would engage the public, encourage responsible use, and provide a process to evaluate and issue Special Use Permits. The Board further directed the Division to report back by March 2010 on the status of that process. This Board Submittal reports on the process and progress to date.

Status Report on Permitting Process for Conservation Stewardship Permits for Kapapa Islet Wildlife Sanctuary, Oahu

An informational meeting was held at Windward Community College, February 3rd, 2010 to inform users of Kapapa Islet of the Division of Forestry and Wildlife's conservation plans with regard to the new wildlife sanctuary rule changes. About 40 people attended the meeting, consisting of fishing clubs (Altapac Fishing Club, Windward Shorecasting Club), Kaneohe Bay Regional Council members, Native Hawaiian Legal Corporation, families with cultural ties to the

conservation on the islet.

DOFAW representatives gave a short breakdown on the history and summary of the new rules that were recently enacted. Individuals expressed concerns about the rule process and their lack of opportunity to participate. It was clearly expressed to them that the rule-making process was followed according to state law, that the rules covered wildlife sanctuaries state-wide and were not specific to Kapapa Islet, and that the meeting at hand was focused on the implementation of the rules and the Division's willingness to work with the community to allow their continued access to the island for uses compatible with natural resource conservation.

There was also concern expressed about the community meeting process. The group was informed that the meetings were "informal" and to be used as an outreach and educational tool that would help DOFAW utilize community and cultural knowledge to manage the island. It would also play a role in defining how DOFAW could apply the specific knowledge of the island's users to decide what activities will be permitted on the island.

DOFAW will hold a series of meetings to accomplish three goals:

1. Establishment of a group of community members, each representing the different users of Kapapa Islet to collaborate on a management plan for recreational, cultural, and other uses of the island, which will be consistent with DOFAW management guidelines for State Seabird Sanctuaries.
2. Guidelines for permits will be established as part of the management plan. These guidelines will be used by the community group to recommend the approval or disapproval of permit applications to DLNR/DOFAW.
3. Use the management plan to enable community stewards to actively assist DOFAW conservation actions. The stewardship group would also help to identify cultural resources on the island, and help to educate visitors to the island.

Our next meeting is scheduled for March 10th, 2010, at 7:00 p.m.

Attachments: Kapapa Community Meeting minutes
3/10/10 Meeting Agenda

Respectfully submitted,



Paul J. Conry, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to read 'Laura H. Thielen', is written over a horizontal line.

LAURA H. THIELEN, Chairperson

Attachment 1

Kapapa Islet
Community Stewardship
Informational Meeting
February 3, 2010
Windward Community College
Alaka'i Bldg. rm. 101

Minutes

1) Meeting started approximately 7:10 pm

- DOFAW staff:
- Jason started off by stating the purpose of the meeting.
- Introductions were made (see sign in sheets). Approximately 40-50 people were in attendance including Senator Clayton Hee. Several fishing clubs and organizations were represented including; Altapac Fishing Club, Windward Shorecasting Club, Kaneohe Bay Regional Council, Laulani Teale representing Native Hawaiian Legal Corporation, Kawelo-Ching Ohana.

2)

- Jaap gave a brief statutory history of the rules regulating wildlife sanctuaries, including the omission of Kapapa Island in the listing of State Wildlife Sanctuaries when HAR-125 were revised in 1981. He also explained that because of this omission, Kapapa Islet was void of any regulatory enforcement and therefore subject to ongoing abuse.
- At its December 11, 2009 meeting the BLNR gave Final Approval to repeal Hawaii Administrative Rules Chapter 13-125, Rules Regulating Wildlife Sanctuaries, and adopt Chapter 13-126, Rules Regulating Wildlife Sanctuaries. Kapapa Islet was included in the new rule.
 - There was discussion that the public was not given enough notice to comment on the rule changes and that only certain user groups were directly contacted and informed (kayak rental companies).
- Jaap gave a brief description of the wildlife sanctuary management goals, including the protection of wildlife on the offshore islets, mainly seabirds.
- Jaap discussed impacts of users and the consequences leading up to the revised rules that now included Kapapa Islet.
 - Comments were made from the audience of the lack of information to the public on the delineation of the "high water mark". "Is it arbitrarily set?" There is a need for signage to make clear where you can and cannot go on Kapapa.
 - Comments were made on the "no take" rule and if it applied to intertidal areas.

3) Jaap stated the purpose of the meeting:

- Since there is an established use pattern for Kapapa Islet since exclusion in HAR Chapter 13-125 e.g. recreational camping, and use above the "high water mark" and within seabird nesting areas. With the revised HAR, DOFAW would like to establish guidelines for future use and permitted activities on Kapapa Islet.

Attachment 1

- DOFAW would like to work with a “stewardship group” that would assist in reviewing permit applications and collaborate on a management plan for the islet.

4) Jaap introduced “Uncle” Richard Likeke Paglinawan to give a cultural history of Kapapa Islet. Richard represented the Kawelo-Ching Ohana who claim cultural stewardship of the islet since the 19th century.

- Kapapa Islet falls within the ahupuaa of Kahaluu. The mauka boundary of the ahupuaa is the peak Kanehoalani and the makai boundary is Kapapa islet.
- He stressed that access to harvest needs to be done in a responsible way.
- Only fish that is in season should be harvested.

Jason gave a brief overview of DOFAW management guidelines. Discussion from audience began:

- There was a question about how Kapapa Islet was put back on the current list. Was there a public hearing?
 - Response – Since Kapapa Islet was omitted there has been much public discussion and concern about the lack of enforcement e.g. homeless residences, accumulation of trash, trampling of seabird burrows, unsanitary conditions, destruction of cultural sites. In order to provide protection and management of the natural resources on Kapapa, the island needed to be included in the wildlife sanctuary rule so that DLNR can provide oversight.
 - Kawelo Ohana member Mike (fireman) thought that there was not enough time for public to respond.
 - Jaap mentioned that the pending rule changes were put out via public notices.
- Question about the procedures for public notice.
- Question resurfaced regarding the delineation of the “high water mark”. How is it established? How will the public know?
 - Jaap responded by mentioning that this forum can help establish how it can be determined i.e. signage.
- Question from audience on whether DOFAW has the authority to make that determination. Is there a grace period for enforcement until that determination can be made?
 - David Smith stated that DOCARE typically does not issue citations if the rules are not clear.
 - Laulani Teale asked if it is possible to get a guarantee from David that DOCARE will not cite if rules are not clear. David stated that he could not guarantee the actions of other people, and that the officers need to be able to exercise their own discretion.
- Representatives from the Kawelo-Ching Ohana (Kapua and Hi`ilei) informed the group that they have been cultural/lineal caretakers of Kapapa islet for generations dating back to the 1800’s. They wanted to present notes from a meeting they had on January 31, 2010 to address issues pertaining to this meeting. There were at least 15 members of their

Attachment 1

ohana present.

- The ohana wants to preserve access to the island.
- In return for access they would *malama* (care) for the site as they always have.
- They understand that boundaries are necessary i.e “high water mark”
- More questions were raised by attendees regarding the definition of the high-water mark. David stated that the term “high water mark” was standard language established by the State to delineate property boundaries between state-owned shoreline and private land owners.
- The ohana would like to be able to continue to camp on Kapapa in a responsible manner with a stewardship component built in.
- They would like the State to make development of signage indicating rules and proper behavior a priority.
- They would like to see trails/paths defined and appropriately marked.
- They would like to perpetuate access to educate their ohana day and night.
- They would like to see harvest of fish for sustenance only.
- They would like clarification on what “cultural access” defines.
- Substitute “traditional use” instead of the term “native Hawaiian”.
- Laulani interjects that this definition is in question from a Hawaiian constitutional standpoint. “Māmalahoe, or *Law of the Splintered Paddle* (also translated *Law of the Splintered Oar*), is a precept in Hawaiian law, originating with King Kamehameha I in 1797. The law, “Let every elderly person, woman and child lie by the roadside in safety,” is enshrined in the state constitution, Article 9, Section 10”
- Question from audience (kayak company rep): How is a commercial use for Kapapa designated? Kapapa Islet is not on the list of sanctuaries where commercial use is allowed.
- Kapapa Islet’s historical significance and accompanying cultural sites need to be recognized and respected.
- They would like to see education about the islet be required before anyone accesses it.
- There needs to be “resource restoration” built into the permit. An assessment needs to be done on what these resources are.
- They would like to know how the permitting process will take place.
- Their family has had open fires historically (part of their traditional practice). They would like to see this practice continue in a controlled manner.
- There has to be a strict limit on the number of people on the islet at any given time.
- There has to be a limited number of trips per year and these trips need to have resource management activities “tied-in”.
- Over the years they have noticed a significant negative impact where the pattern of responsible use has degraded.
- Jaap mentioned that DOFAW would like to address the negative impacts that have been taking place. He suggested something similar to the Kaneohe Bay Master Plan Task Force established in 1991.
- There was a question as to the legality of this meeting (Altapac). Is DOFAW going to modify rules? Why was a seemingly exclusive group notified and not the general public?

Attachment 1

- Criticism of DLNR and how it conducts business.
- Kawelo-Ching Ohana member reminded the group that DOFAW representatives were not required to hold this meeting and that this meeting is being held to work with the public in a collaborative manner.
- Laulani offered the services of NHLC to help the community determine who members of the “advisory group” would be prior to the next meeting with DOFAW.
- Next meeting date set for **March 10, 2010** site to be determined.
- Meeting ended 9:20 pm.

Attachment 1

AGENDA
Kapapa Islet Community Stewardship Meeting

March 10th, 2010
Windward Community College, Hale Akoakoa Rm. 105

1. Open 7:00pm
2. Introductions
 - a. Attendees
 - b. Review of previous meeting
 - c. Questions
3. DOFAW Presentation: Fundamental Management Goals for Kapapa
4. Goals/Proposed Uses for various community groups
 - a. Fishing Groups
 - b. Conservation/Community Groups
 - c. Cultural Users
 - d. Recreational Users
 - e. Others
5. Stewardship Groups
 - a. Establish appropriate user representatives
 - b. Discuss guidelines for permit process
6. Further Meeting Schedule
 - a. Action items for next meetings
7. Close 9:00pm